

ISMAIL J. RAMSEY (CABN 189820)
United States Attorney

MARTHA BOERSCH (CABN 126569)
Chief, Criminal Division

CHRISTIAAN HIGHSMITH (CABN 296282)
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7019
FAX: (415) 436-7234
christiaan.highsmith@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,) CASE NO. CR 20-249 RS (LB)
Plaintiff,)
v.) UNITED STATES' RESPONSE TO DISCOVERY
MARCUS ANDRADE,) ORDER [ECF NO. 250]
Defendant.)
) Court: Hon. Laurel Beeler, Courtroom B, 15th Fl.
)
)
)

The United States, by and through undersigned counsel, hereby responds to the Court's Discovery Order, issued December 3, 2023. Dkt. 250.

I. Returning Mr. Levin's iPhone

The law in this District is clear: the government cannot retain or produce electronic data outside the scope of what a search warrant authorizes the government to seize and retain. *United States v. Balwani*, 18-cr-258 EJD, Order, at 8-9 (N.D. Cal. Apr. 8, 2022) (Dkt. 1393); *see also* U.S. Const. amend. IV. The government has already produced to Mr. Andrade what it seized and retained from Mr. Levin’s iPhone pursuant to the applicable search warrant. Authorities in SDNY stand ready to return the iPhone to Mr. Levin or his counsel. Given the pending litigation currently before this Court concerning Mr. Levin’s iPhone, however, the FBI’s New York Field Office still has possession of Mr. Levin’s

1 iPhone, has not yet returned it to Mr. Levin or his counsel and will retain the iPhone until this litigation
 2 ends.

3 **II. Sufficiency of the iPhone Production**

4 Second, the Court ordered the government to respond to Mr. Andrade's contentions about the
 5 sufficiency of the government's production of material from Mr. Levin's iPhone. Andrade contends –
 6 without any citation to caselaw – that the four Excel spreadsheets the government produced “are
 7 insufficient” because columns showing “who Levin was speaking to, and their numbers, are often blank,
 8 and the content of the messages themselves if often missing.” Andrade's Reply Br. in Support of
 9 Request for Prod. of Levin's Devices, at 6 n.12 (Dkt. 224). Andrade further states that the text or body
 10 of some communications as well as attachments are missing from the spreadsheets. *Id.*

11 The four Excel spreadsheets are what law enforcement authorities in New York identified as
 12 responsive material from Levin's iPhone, seized, and retained. Law enforcement did not identify and
 13 retain other material from Levin's iPhone as being responsive to the search warrant. Mr. Andrade may
 14 wish the government had identified and seized additional information from the Levin iPhone, but it did
 15 not. Because he deems the seized and retained material insufficient, Andrade seeks production of the
 16 entire Levin iPhone or an image of it – what Andrade calls the “Cellebrite image” – without citing any
 17 legal authority to support his contention. *Id.* Again, the law in this District is clear: the government is
 18 not entitled to retain or produce a full image of the Levin iPhone that contains material not responsive to
 19 the search warrant. *Balwani*, Order, at 8-9. The government has produced to Andrade the responsive
 20 material seized and retained from Levin's iPhone – that is the end of the matter. *Balwani*, Order, at 8-9.

21 **III. Mr. Levin's iPad**

22 Regarding Mr. Levin's iPad, the government has repeatedly informed counsel for Mr. Andrade
 23 that the government never gained access to the device and never reviewed any material on the device.
 24 The issue is moot.

25 **IV. Subpoenaing Mr. Levin's iPhone**

26 On November 22, 2023, the government provided counsel for Mr. Andrade with the name and
 27 address of Mr. Levin's counsel. Once the instant litigation surrounding Mr. Levin's iPhone is
 28 concluded, the government intends to return Mr. Levin's iPhone to his counsel and notify counsel for

Mr. Andrade about returning the device.

V. List of Items to be Seized

3 The government is prepared to produce to counsel for Mr. Andrade the attachment to the Levin
4 iPhone search warrant listing the items to be seized from Mr. Levin's iPhone provided that defense
5 counsel signs an attorney's eye only protective order governing the search warrant attachment. An
6 attorney's eyes-only protective order is appropriate given that the search warrant applies to an uncharged
7 third-party (rather than the defendant in this case) as well as numerous additional individuals unrelated
8 to this case, some charged and some not charged. Further, the search warrant attachment references
9 numerous crimes and an alleged criminal scheme wholly unrelated to the instant case. Given the nature
10 of the search warrant attachment and the sensitive information referenced in it, a protective order is an
11 appropriate protection.

VI. Ex Parte Motion

13 On November 9, 2023, Mr. Andrade moved ex parte for the Court to order that the government
14 provide Mr. Andrade’s counsel with the name, phone number, and email address for Mr. Levin’s
15 counsel and to prevent the government from returning Mr. Levin’s iPhone and iPad to Mr. Levin’s
16 counsel. The government has provided Andrade’s counsel with contact information for Mr. Levin’s
17 counsel. Indeed, Mr. Andrade’s counsel may have already reached out to Mr. Levin’s counsel. The
18 government in no way has prevented Andrade from issuing a subpoena to Levin or his counsel.
19 Andrade’s ex parte motion is moot.

21 | DATED: December 7, 2023

Respectfully submitted,

ISMAIL J. RAMSEY
United States Attorney

/s/
CHRISTIAAN HIGHSMITH
Assistant United States Attorney